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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,991	08/06/2003	James G. McErlean	103864.140US1	7452

24395 7590 11/17/2004

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EXAMINER

DESAI, HEMANT

ART UNIT PAPER NUMBER

3721

DATE MAILED: 11/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/634,991

Applicant(s)

MCERLEAN ET AL.

Examiner

Hemant M Desai

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 September 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-51 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>1/7/04</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-4, 7, 9-22, 27-41, 44, 46-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mahar (6769228) and Abshner (53298104) and further in view of Braheir et al. (6688346).

Mahar discloses a system and method that places a label (labeler/printer 422, fig. 4) on a plurality of bags (see col. 11, lines 24-26), a printer (labeler/printer 422, fig. 4) for printing a plurality of labels, each label containing information corresponding to a particular order (see col. 11, lines 1-67; col. 12, lines 1-10). Mahar discloses that the labeler can be configured to print containing information corresponding to a particular order on a separate adhesive label and apply it to a shipping bag. Also, Mahar discloses that the shipping bags are plurality of preformed extruded rolls of material.

Mahar, as mentioned above, disclose all the limitations except that plurality of printed labels disposed on a backing material and mechanism that removes the printed label from the backing material and place the printed label on the bag. Abshner teaches a plurality of printed labels (40, fig. 3) disposed on a backing material (44, fig. 3) and mechanism (46, fig. 3) that removes the printed label from the backing material and place the printed label on the bag (10, fig. 3) to provide an inexpensive and efficient way

to provide the bags with removable labels or coupons (see col. 2, lines 15-20).

Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to having provided plurality of printed labels disposed on a backing material and mechanism that removes the printed label from the backing material and place the printed label on the bag as taught by Abshner in the system and method of Mahar to provide an inexpensive and efficient way to provide the bags with removable labels or coupons.

System and method of Mahar that places the label on the bag as modified by Abshner, meets all the limitations, except for the plurality of bags delimited by a perforation. However, Brahier et al. teach a plurality of bags delimited by the perforation (line of weakness, see col. 6, line 29) so that the bag can be separated from each other at a bagging station (see col. 6, lines 29-30). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to having provided plurality of bags delimited by a perforation as taught by Kramer in the modified system and method of Mahar that places a label on a bag so that the bag can be separated from each other at a bagging station.

Regarding claims 2, Absher teaches a sensor (53, fig. 4) for determining the position of the bag to place the label (40) on the bag responsive to the position determined by the sensor (see col. 4, lines 46-65). Therefore it would have been obvious to provide a sensor as taught by Absher in the modified system and method of Brahier et al. to for determining the position of the bag to place the label.

Regarding claims 3, 21 and 41, Mahar discloses a bag opening mechanism (430, fig. 4) to open the bag subsequent to labeling and a seal area (432, fig. 4) to seal the bag.

Regarding claims 4, 22 and 44, Mahar discloses a packer controller-124, fig. 1 (therefore use of sensor is an inherent feature) that controls loading of the product into each individual bag (see col. 11, lines 40-67; col. 12, lines 1-8).

Regarding claims 7 and 40, Mahar discloses the heat seal assembly (432, fig. 4), which seals the bag.

Regarding claims 9, 27 and 46, Absher teaches roller (46, fig. 3) to separate the label (40, fig. 3, see col. 4, lines 28-30) from the backing material (44, fig. 3). Therefore it would have been obvious to provide the roller as taught by Absher in the system and method of Mahar to separate the label from the backing material.

Regarding claims 10-11, 28-29 and 47-48, Absher teaches a vacuum tamp to facilitate maintaining the label on the surface prior to placing the label on the bag (see col. 33-45). Therefore it would have been obvious to provide the vacuum tamp as taught by Absher in the system and method of Mahar to facilitate maintaining the label on the surface prior to placing the label on the bag.

Regarding claims 12-15 and 30-34, Mahar discloses that the labels are printed (at print and apply labeler 422, fig. 4) and applied to the shipping packages (see col. 11, lines 5-27). Therefore, it is inherent to provide the mechanism claimed in claims 12-15 to apply the labels to the bag.

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Regarding claims 16 and 49, Mahar discloses a continuous system of packaging prescription order. Therefore when the system is printing and applying labels (659, fig. 6D) for one specified prescription, at the same time packager is packing (opening the bag and loading bottles and literature pack (672, fig. 6E) for the previous prescription order.

Regarding claims 18-19, 39, Mahar discloses a controller (124, fig. 1) that associates at least one of a pharmaceutical container and a literature package corresponding to a prescription order with the bag label and comprising a robotic mechanism (434, fig. 4) that places the pharmaceutical container in the bag (see col. 11, lines 40-67).

Regarding claims 20, 37, 50-51, the modified system and method of Mahar, as mentioned above, discloses all the claimed limitations.

Regarding claim 21, Mahar discloses a bag opening mechanism (430, fig. 1) subsequent to labeling (see col. 11, lines 62-67) and a seal bar assembly (432, fig. 4) comprising a heater element and a seal bar to seal the bag (see col. 12, lines 1-10).

Regarding claim 22, Mahar discloses a packer controller (124, fig.1) it is inherent to check whether the bag is in position for opening.

3. Claims 5, 6, 8, 23-26, 42-43 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mahar, Abshner and Braheir et al. as applied to claims 3, 21 and 37 above, and further in view of Kramer (5570568).

The modified system and method of that places the label on the bag meets all the limitations, except for a sensor for detecting a position of a perforation between the bag and a second bag.

However, Kramer teaches a sensor (390, fig. 6) for detecting a position of the perforation and based upon the length of the bag microprocessor activates bag opening and sealing operations (see col. 12, lines 1-12). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to having provided the sensor for detecting a position of the perforation as taught by Kramer in the system and method of Mahar to activate bag opening and sealing operations.

Regarding claims 8 and 26, Kramer teaches to reverse the direction of the stepper motor (32, fig. 1) which advances the bags through the bagging head-20 includes plurality of rollers (see col. 5, lines 26-29) to separate the endmost bag from the chain of interconnected bags (see col. 11, lines 43-45). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to reverse the direction of the plurality of rollers as taught by Kramer in the system and method of Mahar to separate the endmost bag from the chain of interconnected bags.

Response to Arguments

3. Applicant's arguments with respect to claims 1-51 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hemant M Desai whose telephone number is (703) 308-5830. The examiner can normally be reached on 7:00 AM-5: 30 PM, Mon-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on (703) 308-2187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hemant M Desai
Examiner
Art Unit 3721

HMD

A handwritten signature in black ink, appearing to read 'Rinaldi I. Rada', with a long horizontal flourish extending to the right.

Rinaldi I. Rada
Supervisory Patent Examiner
Group 3700